



"Elmer, Mark (ENRD)"
<MElmer@enrd.usdoj.go
v>

02/27/2006 04:47 PM

To Peggy Livingston/RC/R8/USEPA/US@EPA, Maureen
OReilly/ENF/R8/USEPA/US@EPA

cc

bcc

Subject FW: Richardson Flat CD

Peggy/Maureen, here's a redline version of Kevin's proposals re RD/RA decree (comparing proposed language to model). I have issues with several of the proposed provisions, particularly (1) some of the proposed definitions (including future oversight costs and omission of a definition for interim response costs); (2) the concept of a pre-approved "RD/RA Work Plan," which apparently would replace the standard SOW, RD Work Plan, etc.; (3) the paragraph which allows UPCM to continue to use RF as a repository for mine waste from other properties (seems potentially inconsistent with other agreements on this issue, off-site rule, etc.); (4) attempt to limit future costs to some negotiated number (see para. 48); (5) the idea that notice is required before stip penalties can accrue (para. 69); (6) the scope of the Covenant Not To Sue (para. 76); and (7) the failure to include NRD claims in the reservation of rights (para. 81).

I plan to raise these bigger issues with Kevin on Wednesday (I'll probably send him a short email tomorrow, after I've looked through redline, giving him a heads up), but will likely propose that we will send him a redline version with our requested changes as a way of moving the ball forward. We should plan to meet this week after our Wednesday meeting to go through decree and discuss specifically what our requested changes will be.

Talk to you soon,

Mark

-----Original Message-----

From: patrick.malone@mabeymurray.com [<mailto:patrick.malone@mabeymurray.com>]

Sent: Monday, February 27, 2006 4:41 PM

To: Elmer, Mark (ENRD); kevin.murray@mabeymurray.com

Cc: juriona@mabeymurray.com

Subject: RE: Richardson Flat CD

Here is a redline against the 2001 model, which is the last version we have on the system.

I will ask Julie tomorrow to add any recent changes to the model (I believe there was a change to financial assurance last year).

Regards,

Patrick Malone

-----Original Message-----

From: Kevin Murray

Sent: Monday, February 27, 2006 2:45 PM

To: Mark.Elmer@usdoj.gov

Cc: Patrick Malone

Subject: RE: Richardson Flat CD

I thought that is what I sent you. Patrick will you oblige.

-----Original Message-----

From: Mark.Elmer@usdoj.gov [<mailto:Mark.Elmer@usdoj.gov>]

Sent: Monday, February 27, 2006 2:35 PM

To: Kevin Murray

Subject: Richardson Flat CD

Kevin,

Do you have (or can you easily create) a redline version of your proposed edits to RD/RA decree that shows differences between your proposals and the model RD/RA decree? It would make my review a lot easier and would minimize the potential for initially missing something only to have it surface as an issue later. Thanks, I look forward to meeting with you Wednesday.

Mark



richardson redline feb27.doc

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

TABLE OF CONTENTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

~~SETTLING DEFENDANT~~

UNITED PARK CITY MINES COMPANY,

Defendant

Civil Action No. _____

RD/RA CONSENT DECREE

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I. BACKGROUND

- A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.
- B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the _____ Superfund Richardson Flats Site in _____, together with accrued interest, CERCLIS ID # UTD980952840 ("Site"); and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").
- C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA notified the State of _____ Utah (the "State") on _____, 1920, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.
- D. The State of _____ (the "State") has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and ~~list state laws cited in the State's complaint,~~ for: _____.
- E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the ~~insert the relevant Federal natural resource trustee(s)~~ United States Fish and Wildlife Service on _____, 1920, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.
- F. The defendants that have ~~has~~ entered into this Consent Decree ("Settling Defendants") ~~do~~ does not admit any liability to the Plaintiff[s] arising out of the transactions or occurrences alleged in the complaint[s], nor ~~do they~~ does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.
- G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the ~~The Site~~ Site was originally proposed for inclusion on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register ("NPL") on _____, 19____, Fed. Reg. _____ June 24, 1988. Due to scoring issues and comments received from Settling Defendant and others during the public comment period, the Site was removed from NPL consideration in February 1991. The Site was

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re-proposed for the NPL on February 7, 1992. No action has been taken with regard to this proposed listing.

~~H.~~ In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA {or the Settling Defendants, other PRPs at the Site, or the State} commenced on _____, 19____, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

G. EPA {or the Settling Defendants, other PRPs at the Site, or the State} Settling Defendant entered into an Administrative Order on Consent on September 28, 2000 which called for Settling Defendant to conduct a Remedial Investigation and Focused Feasibility Study ("RI/FFS") for the Site.

~~H.~~ Settling Defendant completed ~~its~~ Focused Remedial Investigation ("RI") Report on _____, 19____, and EPA {or the Settling Defendants, other PRPs at the Site, or the State} completed ~~[issued]~~ its Focused Feasibility Study ("FS") Report on _____, 19____ September 2, 2004.

~~J.~~ Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published ~~notice of the completion of the FS and of the proposed plan for remedial action on~~ _____, 19____ September 4, 2004 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action and conducted a public meeting on September 28, 2004. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

~~K.~~ The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on _____, 19____, ~~{on which the State had a reasonable opportunity to review and comment on July 6, 2005, with which the State has given its concurrence.}~~ The ROD includes ~~{EPA's explanation for any significant differences between the final plan and the proposed plan as well as }~~ a responsiveness summary to the public comments.

~~L.~~ K. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

~~M.~~ L. Based on the information presently available to EPA {and the State}, EPA {and the State} believe[s] that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

~~N.~~ M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

~~O.~~ N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation

of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint[s], ~~Settling Defendants waive~~ Defendant waives all objections and defenses that ~~they~~ it may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon ~~the United States [] and inures to the State benefit of, the United States and upon~~ Settling Defendants ~~and their [heirs,]~~, including Settling Defendant's successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter ~~such~~ Settling Defendant's responsibilities under this Consent Decree, unless otherwise agreed in writing by EPA.
3. ~~Settling Defendants~~ Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing ~~any~~ Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or ~~their~~ its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that ~~their~~ its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section ~~XXIX~~ XXIX. APPENDICES). In the event of conflict between this Decree and any appendix, this decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a ~~working day~~.

~~Working day~~ Day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next ~~working day~~ Working Day.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph ~~11~~ 499.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"~~_____~~ UDEQ" shall mean the [~~insert name Utah Department of State pollution control agency or environmental protection agency~~] Environmental Quality and any successor departments or agencies of the State.

[NOTE: If EPA determines that it is appropriate for this consent decree to provide orphan share compensation to the Settling Defendants through forgiveness of RD/RA oversight costs, insert the following definition.]

~~"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Defendant's performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, inter alia, the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 95 of Section XXI (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.~~

~~"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 95 of~~

Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs. Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [insert the date identified in the Past Response Costs definition] to the date of entry of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between [insert the date identified in the Past Response Costs definition] and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Future Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs incurred by the United States after the Effective Date and until such time as EPA issues the Certification of Completion of the Remedial Action (as provided in Article XIV) that relate to EPA's oversight of the Work.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

~~[NOTE: If the Consent Decree includes provisions under which the Settling Defendants will receive disbursement from an EPA special account, the following three definitions should be added.]~~

~~"Interest Earned" shall mean interest earned on amounts in the [Site Name] Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.~~

~~"[Site Name] Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and [identify prior settlement under which EPA established the special account].~~

~~"[Site Name] Disbursement Special Account" shall mean the special account established for the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and this Consent Decree.~~

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and

~~Maintenance Remedial Design/Remedial Action Work Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).~~

~~"Owner Settling Defendants" shall mean the Settling Defendants listed in Appendix E.~~

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States ~~[, the State of _____]~~ and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through ~~[insert the prior to the effective date of the most recent cost update]~~, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

~~"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section ____ of the ROD and Section ____ of the SOW [and any modified standards established by EPA pursuant to the "technical impracticability" provision of Paragraph 13].~~

~~"Plaintiff[s]" shall mean the United States [and the State of _____].~~

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the ~~[Site or _____ Operable Unit at the Site]~~ signed on _____, 19 July 6 _____, 2005, by the Regional Administrator, EPA Region _____ VIII, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW ~~and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.~~

~~"Remedial Design/Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 1211 of this Consent Decree and approved by EPA, and any amendments thereto. "Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.~~

~~"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.~~

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendices D (Non-Owner Settling Defendants) United Park City Mines Company, its successors and E (Owner Settling Defendants) assigns.

"Site" shall mean the Superfund Site, [encompassing approximately _____ acres, located at [address or description of location] in [name of city], _____ County; {name "Site" shall mean the Richardson Flats Site, CERCLIS ID # UTD980952840, an approximately 160 acre tailings impoundment, with associated diversion ditches, remedial wetlands and other features, including, without limitation, the fullest extent of any groundwater plume emanating from the Site. The Site is part of certain real property owned by Settling Defendant that comprises approximately 650 acres. The Site is located approximately 1.5 miles northeast of state} Park City, Utah, and is depicted generally on the map attached as Appendix C.}B.

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~~{NOTE: The definition of "Site" affects the scope of the covenants not to sue. The definition used should conform with the intended scope of the covenants and the general reservations provided in Section XXI (Covenants Not to Sue by Plaintiff(s)).}~~

"State" {or "Commonwealth"} shall mean the State {or Commonwealth} of _____.

~~{NOTE: Where the state is a party to the consent decree, definitions of "State Past Response Costs" and "State Future Response Costs" will need to be added to this section as appropriate.}~~

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"State" shall mean the State of Utah.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); ~~{and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.~~

~~§ 6903(27); and (4) any "hazardous material" under {insert appropriate State statutory citation}}.~~

"Work" shall mean all activities Settling Defendants are Defendant is required to perform under this Consent Decree, except those required by Section XXV (Retention of Records). XXV. RETENTION OF RECORDS.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff[s], and to resolve the claims of Plaintiff[s] against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

- a) 6. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States [and the State] for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b) The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States [and the State] under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the Remedial Design/Remedial Action Work Plan. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

- a) As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit, including without limitation any permit required by the Federal Water Pollution Control Act, §§ 1251-1387, shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or, in very close proximity to the contamination and necessary for implementation of the Work), or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree) or water emanating from the Site as contemplated by the Remedial Design. Where any portion of the Work that is

not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

- b) The Settling Defendants may seek relief under the provisions of Section XVIII (~~Force Majeure~~)XVIII. FORCE MAJEURE of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.
- c) This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

~~{NOTE: For Consent Decrees in which there is an Owner Settling Defendant, add Paragraph 9, below. Paragraph 9.a may be deleted if an easement will be recorded pursuant to Paragraph 26.e}~~

9. Notice to Successors-in-Title.

- a) With respect to any property owned or controlled by the Owner-Settling Defendant(s) that is located within the Site, within ~~45~~30 days after the entry of this Consent Decree, the Owner-Settling Defendant(s) shall submit to EPA for review and approval a notice to be filedfile with the Recorder's Office ~~for Registry of Deeds or other appropriate office~~, ~~Summit~~ County, State of ~~Utah~~, which shall provideUtah, notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on ~~July 6, 2005~~ and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner-Settling Defendant(s) shall record the notice(s) within ~~Such~~ notice shall be in substantially the same form as that attached hereto as Exhibit ~~_____~~. The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notice within 30 days of recording such notice.
- a) ~~At least 10 days of EPA's approval of the notice(s). The Owner-Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).~~
- b) ~~At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner-Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls).~~IX. ACCESS AND INSTITUTIONAL CONTROLS, and (iii) any instrument by which an interest in real property has

been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section ~~IX~~ (~~Access and Institutional Controls~~). IX. ACCESS AND INSTITUTIONAL CONTROLS. Such notice shall be in substantially the same form as that attached hereto as Exhibit . In lieu of the foregoing, Settling Defendant may record (i) the Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX. ACCESS AND INSTITUTIONAL CONTROLS. and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX. ACCESS AND INSTITUTIONAL CONTROLS with the Recorder's Office, Summit County, State of Utah.

b)c) At least 30 days prior to such conveyance, the ~~Owner~~ Settling Defendant(s) conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

e)d) In the event of any such conveyance, the ~~Owner~~ Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section ~~IX~~ (~~Access and Institutional Controls~~) of this Consent Decree, shall continue to be met by the ~~Owner~~ Settling Defendant(s), unless otherwise agreed to in writing by EPA. In no event shall the conveyance release or otherwise affect the liability of the ~~Owner~~ Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

~~[NOTE: Paragraphs 10-12, below, may be modified on a site-by-site basis to reflect site needs and Regional practice.]~~

10. [Selection of Supervising Contractor.

- a) All aspects of the Work to be performed by Settling Defendants pursuant to Sections ~~VI~~ (~~Performance of the Work by Settling Defendants~~), ~~VII~~ (~~Remedy Review~~), ~~VIII~~ (~~Quality Assurance, Sampling and Data Analysis~~), and ~~XV~~ (~~Emergency Response~~) VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT, VII. REMEDY REVIEW, VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS, and XV. EMERGENCY RESPONSE of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA [after a reasonable opportunity for review and comment by the State].

Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA [and the State] in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI ASQC-E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA [and the State] and must obtain an authorization to proceed from EPA[, after a reasonable opportunity for review and comment by the State,] before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. EPA hereby approves United Park City Mines Company's Kerry Gee as the Supervising Contractor.

- b) If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA [and the State] a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. If at any time after the Effective Date, Settling Defendant proposes to change its Supervising Contractor, Settling Defendant shall give notice of the proposal to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. Approval of a new Supervising Contractor shall not be unreasonably withheld. If EPA and Settling Defendants may select any contractor from that list that is not disapproved Defendant are not able to agree as to a proposed Supervising Contractor and shall notify EPA [and the State] of the name of the contractor selected within 21 days of EPA's authorization to proceed.

- e)b) If EPA fails failure to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure agree prevents the Settling Defendants from meeting one or more deadlines in this Consent Decree or in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) thereof. XIX. DISPUTE RESOLUTION of this Consent Decree.

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11. Work Plans and Deliverables.

++ Remedial Design:

- a) Within days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design, The Remedial Design/Remedial Action Work Plan attached hereto as Appendix , including all of its separate attachments, is hereby approved and accepted by EPA. Any action or requirement in the Remedial Design/Remedial Action Work Plan (including its attachments) may be modified by mutual agreement between EPA and Settling Defendant without modifying this Consent Decree. The Remedial Design/Remedial Action Work Plan shall be is incorporated into and become is enforceable under this Consent Decree. Within days after EPA's issuance of an authorization to proceed, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.
- b) The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: ~~[List all items which should be included in the Remedial Design Work Plan. This list will be based on site specific factors and shall include the following items:~~ (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD-QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); and (2) a Construction Quality Assurance Plan; and may also include: (1) a treatability study; (2) a Pre-design Work Plan; (3) a preliminary design submittal; (4) an intermediate design submittal; and (5) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.
- c) Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.
- d) The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field

sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

- e) — The intermediate design submittal, if required by EPA or if independently submitted by the Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.
- f) — The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.]

42. — Remedial Action:

- a) — Within days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.
- b) — The Remedial Action Work Plan shall include the following: [List all activities for which methodologies, plans and schedules should be included in the Remedial Action Work Plan. This list will be based on site specific factors and may include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) tentative formulation of the Remedial Action team; (9) construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials.] The Remedial Action Work Plan also shall include the methodology

for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

- c) Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.]

13. The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

[NOTE: A "technical impracticability" provision may be inserted here in appropriate cases. If a technical impracticability provision is included, the definition of Performance Standards should be modified to incorporate any modified Performance Standards that may be issued by EPA pursuant to a technical impracticability provision.]

14. Modification of the SOW or Related Work Plans:

- a) If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.
- b) For the purposes of this Paragraph 14 and Paragraph 50 [and ___] only, the "scope of the remedy selected in the ROD" is: [site-specific definition to be inserted here]
- c) If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 75 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.
- d) Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

12. Modification of the Remedial Design/Remedial Action Work Plan.

- a) If EPA determines that modification to the work specified in the Remedial Design/Remedial Action Work Plan is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require by written demand that such modification be incorporated into the Remedial Design/Remedial Action Work Plan, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.
- b) If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX. DISPUTE RESOLUTION, Paragraph 62. The Remedial Design/Remedial Action Work Plan shall be modified in accordance with final resolution of the dispute.
- c) Settling Defendant shall implement any work required by any modifications incorporated in work plans in accordance with this Paragraph.
- d) If Settling Defendant desires to deviate from the Remedial Design/Remedial Action Work Plan, or any schedule or plan relating thereto, Settling Defendant may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator, which shall not be unreasonably withheld. EPA's Project Coordinator shall provide written confirmation of any oral approval within five (5) days of granting such oral approval.
- e) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

~~15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff[s] that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.~~

~~16.13. Off-site Shipments~~

- a) Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
- i) The Settling Defendants shall include in the written notification the following information, where available: (A) the name and location of the facility to which the Waste Material is to be shipped; (B) the type and

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quantity of the Waste Material to be shipped; (C) the expected schedule for the shipment of the Waste Material; and (D) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

- ii) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.1(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- b) Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.
- b)c) As contemplated by the ROD, Settling Defendant is hereby authorized, but not obligated, to accept mine waste from the Park City area within the Site impoundment. Settling Defendant shall provide EPA's Project Coordinator with oral notification of any shipment of mine waste to the Site prior to acceptance of any such shipment.

VII. REMEDY REVIEW

~~[NOTE: This Section may need to be modified or omitted in consent decrees where the United States is not giving a full covenant not to sue subject to pre and post certification reservations (e.g., non-final operable unit consent decrees). This Section may also be omitted where no hazardous substances, pollutants or contaminants will remain at the site after completion of the remedial action.]~~

~~17.14. Periodic Review.~~ Settling Defendants shall conduct any studies and investigations as reasonably requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

~~18.15. EPA Selection of Further Response Actions.~~ If EPA reasonably determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

~~19.16. Opportunity To Comment.~~ Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to

Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

~~20.17.~~ Settling Defendants' Defendant's Obligation To Perform Further Response Actions. ~~If In the event that EPA selects further response actions for the Site, the EPA may require that Settling Defendants shall undertake Defendant implement any such further response action(s) only to the extent that the reopener conditions in Paragraph 9+78 or Paragraph 92~~ (a) (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX ~~(Dispute Resolution)~~ XIX. DISPUTE RESOLUTION to dispute (1) EPA's determination that the reopener conditions of Paragraph 9+78 or Paragraph 92 ~~of Section XXI (Covenants Not To Sue by Plaintiff[s])~~ a) of Section XXI. COVENANTS NOT TO SUE BY PLAINTIFF are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 7562 (record review).

~~21.18.~~ Submissions of Plans. ~~If Settling Defendants are Defendant is required to perform the further response actions pursuant to Paragraph 20, they 17, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants)~~ VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

~~{ALTERNATIVE: The preceding two Paragraphs (20 & 21) may be omitted: (1) for Settling Defendants whose liability has been established by court order or judgment; (2) for Settling Defendants who agree to admit or not to contest liability in the event that the United States institutes an action for further relief based on the reservations set forth in Paragraphs 91 or 92 of the Covenant Not To Sue; or (3) in other appropriate cases.}~~

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

~~22.19.~~ Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all {treatability, design, compliance and-or monitoring} samples required by the Remedial Design in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW Remedial Design/Remedial Action Work Plan, the NCP and {applicable guidance documents.}. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any

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proceeding under this Decree. Settling Defendants shall ensure that Defendant shall allow EPA [and State] personnel and its [their] authorized representatives are allowed representative's access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure require that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure require that the laboratories they utilize it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the ["Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988], and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall ensure require that all laboratories they use it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure require that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23.20. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA [and the State] or their [its] authorized representatives. Settling Defendants shall notify EPA [and the State] not less than [28] 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem necessary. Upon request, EPA [and the State] shall allow the Settling Defendants to take split or duplicate samples of any samples it [they] take[s] takes as part of the Plaintiff's ['] oversight of the Settling Defendants' Defendant's implementation of the Work.

24.21. Settling Defendants shall submit to EPA [and the State] ___ copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25.22. Notwithstanding any provision of this Consent Decree Except as provided in Section XXI hereof, the United States [and the State] hereby retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

~~{NOTE: Subparagraphs 26.a and 27.a should routinely be included in consent decrees. Subparagraphs 26.b and 27.b should be included where EPA determines that land/water use restrictions are needed on property owned by settling or non-settling landowners to ensure the integrity or protectiveness of the remedial action. Subparagraphs 26.c and 27.c should be included where EPA determines that a property interest running with the land (granting either a right of access or a right to enforce land/water use restrictions) should be acquired by EPA or another grantee from settling or non-settling landowners.}~~

~~26.23.~~ If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

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- a) commencing on the date of lodging of this Consent Decree, provide the United States~~{the State,}~~ and its ~~{their}~~ representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:
 - i) Monitoring the Work;
 - ii) Verifying any data or information submitted to the United States~~{or the State}~~;
 - iii) Conducting investigations relating to contamination at or near the Site;
 - iv) Obtaining samples;
 - v) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
 - vii) Implementing the Work pursuant to the conditions set forth in Paragraph 9582 of this Consent Decree;
 - viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or ~~their~~ agents, consistent with Section XXIV (Access to Information); XXIV. ACCESS TO INFORMATION;
 - ix) Assessing Settling Defendants' Defendant's compliance with this Consent Decree; and

- x) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
- b) commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. ~~Such restrictions include, but are not limited to, [LIST SPECIFIC RESTRICTIONS]; and~~
- c) execute and record in the Recorder's Office ~~[or Registry of Deeds or other appropriate land records office]~~ of Summit County, State of Utah, an easement, running with the land, that (i) grants EPA a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.0(a) of this Consent Decree, and (ii) grants EPA the right to enforce the land/water use restrictions listed in Paragraph 26.0(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. ~~Such~~
- e) ~~Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees].~~
- d) ~~Such Settling Defendants~~ shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:
- i) A draft easement, in substantially the form attached hereto as Appendix , that is enforceable under the laws of the State of Utah, and
- ii) ~~A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are Defendant is unable to obtain release or subordination of such prior liens or encumbrances).~~
- ii) ~~Within 15 days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office [or Registry of Deeds or other appropriate office] of Summit County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other~~

~~final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.~~

~~27.24.~~ If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use commercially reasonable best efforts to secure from such persons:

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- a) ~~an agreement to provide access thereto for Settling Defendants, as well as for, the United States on behalf of EPA, and the State, as well as their~~ its representatives ~~(, including EPA and its contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.0(a) of this Consent Decree;~~
- b) ~~an agreement, enforceable by the Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to {list specific restrictions or cross-reference restrictions in Paragraph 26, if applicable}; and~~
- c) ~~the execution and recordation in the Recorder's Office {or Registry of Deeds or other appropriate land records office} of _____ Summit County, State of _____ Utah, of an easement, running with the land, that (i) grants EPA a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.0(a) of this Consent Decree, and (ii) grants EPA the right to enforce the land/water use restrictions listed in Paragraph 26.0(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to {(i) the United States, on behalf of EPA, and its representatives. (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees}.~~ Within 45 days of entry of this Consent Decree, Settling Defendants shall submit to EPA for review and approval with respect to such property:
 - i) A draft easement, in substantially the form attached hereto as Appendix _____, that is enforceable under the laws of the State of _____ Utah, and
 - ii) A current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement

to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are Defendant is unable to obtain release or subordination of such prior liens or encumbrances). Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Recorder's Office [or Registry of Deeds or other appropriate office] of _____ County. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to

25. If (a) any access or land/water use restriction agreements required by Paragraphs 24(a) or 24(b) of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) or any access easements or restrictive easements required by Paragraph 24(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 0(c)(1) or Paragraph 24(c)(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of entry of this consent decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant have taken to attempt to comply with Paragraph 0 or 24 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI. PAYMENTS FOR RESPONSE COSTS, for all reasonable costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.
- ii) ~~If EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.~~
28. ~~For purposes of Paragraphs 26 and 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. [NOTE: It may be appropriate to delete the preceding sentence if the property where access or land/water use restrictions are~~

needed is owned by a nonsettling party who EPA determines is a PRP. (See guidance entitled "Model RD/RA Consent Decree: Acceptable Modifications to Model Language (Directive No. 2)," March 25, 1992)) If (a) any access or land/water use restriction agreements required by Paragraphs 27.a or 27.b of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) or any access easements or restrictive easements required by Paragraph 27.c of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of entry of this consent decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 or 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29.26. If EPA reasonably determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's [and the State's] efforts to secure such governmental controls.

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30.27. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] Except as provided in Section XXI below, the United States retains all of its access authorities and rights, as well as all of its [their] rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31.28. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State — copies of written [monthly] quarterly progress reports that:

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- a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous [month] three months;

- b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or ~~their~~its contractors or agents in the previous ~~{month}~~three months;
- c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous ~~{month}~~three months;
- d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next ~~{six weeks}~~three months and provide other information relating to the progress of construction; ~~including, but not limited to, critical path diagrams, Gantt charts and Pert charts;~~
- e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- f) include any modifications to the work plans or other schedules that Settling ~~Defendants have~~Defendant has proposed to EPA or that have been approved by EPA; and
- g) describe all activities undertaken in support of the Community Relations Plan during the previous ~~{month}~~three months and those to be undertaken in the next ~~{six weeks}~~three months. Settling Defendants shall submit these progress reports to EPA and the State by the ~~{tenth day}~~10th of every month~~each April, July, October, and January~~ following the lodging of this Consent Decree until {EPA notifies the Settling Defendants pursuant to Paragraph 51-45(b) of Section XIV (Certification of Completion)}XIV. CERTIFICATION OF COMPLETION. If requested by EPA ~~{or the State}~~, Settling Defendants shall also provide briefings for EPA ~~{and the State}~~ to discuss the progress of the Work.

~~32.29.~~ The Settling Defendants shall notify EPA of any change in the schedule described in the ~~monthly~~quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

~~32.30.~~ Upon the occurrence of any event during performance of the Work that Settling ~~Defendants are~~Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 ~~hours of the onset~~hour of its first becoming aware of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region ~~—~~VIII, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

~~34.31.~~ Within 20 days of the onset ~~Settling Defendant~~ first becoming aware of such an event, Settling Defendants shall furnish to Plaintiff[s] a written report, signed by the Settling Defendants' Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

~~35.32.~~ Settling Defendants shall submit —copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the /Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit —copies of all such plans, reports and data to the State. Upon request by EPA Settling Defendants shall submit in electronic form all portions of any report or other deliverable ~~Settling Defendants are~~ Defendant is required to submit pursuant to the provisions of this Consent Decree.

~~36.33.~~ All reports and other documents submitted by Settling Defendants to EPA (other than the {monthly/quarterly} progress reports referred to above) which purport to document Settling Defendants' Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

~~37.---~~ After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within —30 days, except where to do so would cause serious disruption to the Work or where ~~previous~~the submission(s) have has previously been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

~~38.34.~~ In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(e) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

~~39.35.~~ Resubmission of Plans.

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a) — If EPA disapproves (in whole or in part), modifies, or imposes a condition on any deliverable or other submission, EPA shall provide Settling Defendant with written notice of the deficiency and shall provide Settling Defendant with the right to cure the deficiency or satisfy the condition. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in ~~Section XXXX~~, STIPULATED PENALTIES, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is reasonably disapproved or modified due to a material defect ~~as provided in Paragraphs 40 and 41.~~

b) a) . Notwithstanding the receipt of ~~asuch~~ notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. ~~Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).~~

40.b) In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to ~~their~~ right to invoke the procedures set forth in Section ~~XIX~~ (Dispute Resolution). XIX. DISPUTE RESOLUTION.

41.c) If upon resubmission, a plan, report, or item is reasonably disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the ~~Settling Defendants invoke~~ Settling Defendant invokes the dispute resolution procedures set forth in Section ~~XIX (Dispute Resolution)~~ XIX. DISPUTE RESOLUTION and EPA's action is overturned pursuant to that Section. The provisions of Section ~~XIX (Dispute Resolution)~~ and ~~Section XX (Stipulated Penalties)~~ XIX. DISPUTE RESOLUTION and ~~Section XX. STIPULATED PENALTIES~~ shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in ~~Section XXXX. STIPULATED PENALTIES.~~

42.36. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

~~43.37.~~ Within 20 days of lodging this Consent Decree, EPA hereby designates Peggy Churchill as its Project Coordinator. Settling Defendants~~[- the State]~~ Defendant hereby designates, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate~~approves~~, Kerry Gee as its Project Coordinator. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor (~~the Alternate Project Coordinator~~) will be given to the other Parties at least 5 working days before the ~~changes occur, change occurs~~ unless impracticable, but in no event later than the actual day the change is made. ~~The Settling Defendants'~~ Defendant's Alternate Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. ~~The Settling Defendants'~~ Defendant's Project Coordinator shall not be an attorney for ~~any of the Settling Defendants~~ in this matter. He or she may, ~~however~~, assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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~~44.38.~~ Plaintiff~~s~~ may designate other representatives, including, but not limited to, EPA ~~and State~~ employees, and federal ~~and State~~ contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

~~45.39.~~ {EPA's Project Coordinator and the Settling Defendants'~~Defendant's~~ Project Coordinator will meet, at a minimum, on a ~~monthly~~quarterly basis.}

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

~~46.40.~~ Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of ~~\$[insert estimated cost of Work]~~\$ 4,262,729.65 in one or more of the following forms:

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- a) A ~~surety~~ performance bond or insurance policy guaranteeing or insuring performance of the Work;
- b) One or more irrevocable letters of credit ~~equalling~~equaling the total estimated cost of the Work;
- c) A trust fund;

- d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or
- e) A demonstration that ~~one or more of the Settling Defendants satisfy~~ Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f) ~~(NOTE: For these purposes, references in 40 CFR 264.143(f) to the "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates" shall mean the amount of financial security specified above.)~~
- e) ~~If the Settling Defendant(s) who seek(s) to provide a demonstration under 40 CFR 264.143(f) has (have) provided a similar demonstration at other RCRA or CERCLA sites, the amount for which it (they) was (were) providing financial assurance at those other sites should generally be added to the estimated costs of the Work from this paragraph); or~~
- f) ~~Insert any other method(s) appropriate to the particular case;.~~

~~47.41.~~ If the Settling Defendants seek seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46-40(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek Defendant seeks to demonstrate ~~their~~ its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46-40(d) or 46-~~(e, they)~~, it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA ~~after a reasonable opportunity for review and comment by the State,~~ determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 4640 of this Consent Decree. Settling Defendants' Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

~~48.42.~~ If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 4640 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49.43. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

~~[NOTE: Paragraph 50, below (Completion of the Remedial Action), is only required for Site-wide or Final Operable Unit Consent Decrees, in which the United States has decided to grant a full covenant not to sue (i.e., where Certification of Completion of the Remedial Action is necessary to trigger a full covenant not to sue under Sections 106 and 107 of CERCLA).]~~

50.44. Completion of the Remedial Action.

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- a) Within 90 days after Settling Defendants conclude Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, [Defendant and] EPA [and the State]. If, after the pre-certification inspection, the Settling Defendants still believe believes that the Remedial Action has been fully performed and the Performance Standards have been attained, they it shall within 30 days of the inspection submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS requesting certification of completion of the Remedial Action. In the report, a registered professional engineer and the Settling Defendants' Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this

Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14-1.a)(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW Remedial Design/Remedial Action Work Plan or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section ~~XI~~ (EPA Approval of Plans and Other Submissions). XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). XIX. DISPUTE RESOLUTION.

- b) If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section ~~XXI (Covenants Not to Sue by Plaintiff(s))~~. XXI. COVENANTS NOT TO SUE BY PLAINTIFF. Certification of Completion of the Remedial Action shall not affect Settling Defendants' Defendant's obligations under this Consent Decree.

51.45. Completion of the Work.

- a) Within 90 days after Settling Defendants ~~conclude~~ Defendant concludes that all phases of the Work (including ~~excluding~~ perpetual O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, ~~++~~ Defendant and EPA ~~(and the State)~~. If, after the pre-certification inspection, the Settling Defendants still ~~believe~~ believes that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW Remedial Design/Remedial Action Work Plan or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). XIX. DISPUTE RESOLUTION.

- b) If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

52.46. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 53.47, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA [Emergency National Response Unit] Region Center at 1-800-424-8802. Settling Defendants shall take such appropriate actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW Remedial Design/Remedial Action Work Plan. In the event that Settling Defendants fail Defendant fails to take appropriate response action as required by this Section, and EPA [or, as appropriate, the State] take[s] takes such action instead, Settling Defendants shall reimburse EPA [and the State] all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs). XVI. PAYMENTS FOR RESPONSE COSTS.

53.47. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States [or the State,] a) to take all appropriate action to

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protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff[s]). XXI. COVENANTS NOT TO SUE BY PLAINTIFF.

XXVI. PAYMENTS FOR RESPONSE COSTS

54.48. Payments for Past Response Costs.

- a) Within 30 days of the Effective Date, Settling Defendants shall pay to EPA \$_____ in payment for Past Response Costs. Payment shall be made ~~{insert one of the two following paragraphs, as appropriate:}~~

~~{If the payment amount is above \$10,000 the following language should be used:}~~

- a) _____ by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID Number _____, and DOJ Case Number _____. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of _____ following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

~~{If the payment amount is below \$10,000 the following language may be used:}~~

- b) by-At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with XXVI. NOTICES AND SUBMISSIONS.

The total amount to be paid by Settling Defendant pursuant to Subparagraph 48(a-certified or cashier's check or checks made payable to the "U.S. Department of Justice," referencing the name and address of the party making payment, USAO File Number _____, EPA Site/Spill ID Number _____, and DOJ Case Number _____. Settling Defendants shall send the check(s) to:

{Insert the address of the Financial Litigation Unit of the U.S. Attorney's Office for the District in which the Consent Decree will be entered}

- b) At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions). **{NOTE ON DIRECTING PAYMENTS TO EPA HAZARDOUS SUBSTANCE SUPERFUND AND/OR TO SITE SPECIFIC SPECIAL ACCOUNT: Payments made under Subparagraph 54.a may be deposited in the EPA Hazardous Substance Superfund or may be deposited in**

a site-specific special account within the EPA Hazardous Substance Superfund (more accurately referred to as a "reimbursable account"). The Consent Decree should include clear instructions indicating which portion of the payment is to be placed in the EPA Hazardous Substance Superfund and which portion of the payment is to be placed in a special account. Sample instructions for the three possible deposit options (EPA Hazardous Substance Superfund, special account, or split between the EPA Hazardous Substance Superfund and the special account) follow. The payment instructions stated in Subparagraphs 54.a and 54.b are correct for all three options.†

c) — {Insert one of the following three paragraphs here.}

{If the entire payment will be deposited in the EPA Hazardous Substance Superfund:} The total amount to be paid by Settling Defendants pursuant to Subparagraph 54.a shall be deposited in the EPA Hazardous Substance Superfund.

c) — {If the entire payment will be deposited in a special account:} The total amount to be paid by Settling Defendants pursuant to Subparagraph 54.a shall be deposited in the {Site Name} Richardson Flat Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

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{If the payment will be split between the EPA Hazardous Substance Superfund and a special account:} Of the total amount to be paid by Settling Defendants pursuant to Subparagraph 54.a, { "\$ _____ or _____ %" } shall be deposited in the EPA Hazardous Substance Superfund and { "\$ _____ or _____ %" } shall be deposited in the {Site Name} Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d) — {Within 30 days of the Effective Date, Settling Defendants shall pay to the State \$ _____ in the form of a certified or cashier's check or checks made payable to _____ in reimbursement of State Past Response Costs. The Settling Defendants shall send the certified or cashier's check(s) to _____.}

55.49. Payments for Future Response Oversight Costs.

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a) Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. {NOTE: If EPA determines that it is appropriate for this consent decree Oversight Costs, up to provide orphan share compensation to the Settling Defendants through forgiveness of RD/RA oversight costs, a maximum amount of \$ {insert the following phrase:}, excluding the first \$ {insert amount of future oversight compromise} of Future Oversight Costs.} On a periodic basis the United States will send Settling

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Defendants a bill requiring payment that includes a [insert name of standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and name of DOJ prepared cost summary which reflects costs incurred by DOJ and its contractors, if any]. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56-1.a). Settling Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number _____, and DOJ Case Number _____. Settling Defendants shall send the check(s) to: [Insert appropriate Regional Superfund Lockbox number and address]

- b) At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions). XXVI. NOTICES AND SUBMISSIONS.
- e) ~~[Insert instructions on whether payments for Future Response Cost(s) should be deposited in the EPA Hazardous Substance Superfund, a special account, or split between the EPA Hazardous Substance Superfund and a special account. Sample language for the three options is provided in Subparagraph 54.c above.]~~
- d) ~~[Settling Defendants shall reimburse the State for all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send Settling Defendants a bill requiring payment that includes a [Insert name of standard State-prepared cost summary, which includes direct and indirect costs incurred by the State and its contractors] on a [periodic] basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Settling Defendant may contest payment of any Future Oversight Costs under Paragraph 56. The Settling Defendants shall make all payments to the State required by this Paragraph in the manner described in Paragraph 54.d.]~~

~~56.50. Settling Defendants may contest payment of any Future Response Costs under Paragraph 550 if they determine that it determines that the United States [or the State] has made an accounting error or if they allege it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 3090 days of receipt of the bill and must be sent to the United States [(if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed)] pursuant to Section XXVI (Notices and Submissions). pursuant to XXVI. NOTICES AND SUBMISSIONS. Any such objection shall specifically identify the contested Future Response Oversight Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 3090 day period pay all uncontested Future Response Oversight Costs to the United States [or the State] in the manner described in Paragraph 55-0. Simultaneously, the Settling Defendants shall establish an interest-~~

bearing escrow account in a federally-insured bank duly chartered in the State of _____ and remit to that escrow account funds equivalent to the amount of the contested Future Response~~Oversight~~ Costs. The Settling Defendants shall send to the United States, as provided in Section ~~XXVI~~ (Notices and Submissions), ~~and the State~~ XXVI. NOTICES AND SUBMISSIONS, a copy of the transmittal letter and check paying the uncontested Future Response~~Oversight~~ Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section ~~XIX~~ (Dispute Resolution). XIX. DISPUTE RESOLUTION. If the United States ~~for the State~~ prevails in the dispute, within 15 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States ~~for the State, if State costs are disputed,~~ in the manner described in Paragraph §5.0. If the Settling Defendants ~~prevail~~ Defendant prevails concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they ~~it~~ did not prevail to the United States ~~for the State, if State costs are disputed~~ in the manner described in Paragraph §5.0; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section ~~XIX~~ (Dispute Resolution) XIX. DISPUTE RESOLUTION shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' Defendant's obligation to reimburse the United States ~~and the State~~ for its ~~their~~ Future Response~~Oversight~~ Costs.

~~§7.51.~~ In the event that the payments required by Subparagraph §4.48(a) are not made within 30 days of the Effective Date or the payments required by Paragraph §5.0 are not made within 30 days of the Settling Defendants' Defendant's receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs ~~and State Past Response Costs~~ under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response~~Oversight~~ Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 79. ~~The~~66. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph §5.0.

[NOTE ON DISBURSEMENT OF SPECIAL ACCOUNT FUNDS: Insert the following language when EPA agrees to disburse special account funds to Settling Defendants who are performing Work under this Consent Decree. The decision to disburse funds is within EPA's sole discretion and should be done consistent with the "Interim Final Guidance on Disbursement of Funds From EPA Special Accounts to CERCLA Potentially Responsible Parties" (November 3, 1998).]

XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

58. ~~Creation of [Site Name] Disbursement Special Account and Agreement to Disburse Funds to Settling Defendants. Within 30 days after the Effective Date, EPA shall establish a new special account, the [Site Name] Disbursement Special Account, within the EPA Hazardous Substance Superfund and shall transfer \$_____ from the [Site Name] Special Account to the [Site Name] Disbursement Special Account. [NOTE: If, as part of the RD/RA Consent Decree, there are cashout parties whose funds will be deposited into a special account and then disbursed to Settling Defendants, contact Headquarters to consult on appropriate language.] Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the [Site Name] Disbursement Special Account, including Interest Earned on the funds in the [Site Name] Disbursement Special Account, available for disbursement to Settling Defendants as partial reimbursement for performance of the Work [or specify the activity for which the special account funds are to be disbursed] under this Consent Decree. EPA shall disburse funds from the [Site Name] Disbursement Special Account to Settling Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section.~~
59. ~~Timing, Amount and Method of Disbursing Funds From the [Site Name] Disbursement Special Account. Within _____ days of EPA's receipt of a Cost Summary and Certification, as defined by Subparagraph 60.b, or if EPA has requested additional information under Subparagraph 60.b or a revised Cost Summary and Certification under Subparagraph 60.c, within _____ days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the [Site Name] Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below: [NOTE: The Decree should outline a phased payment plan that typically lists two to four milestones of the Work. The completion of a milestone will trigger the right to request disbursement of a set amount or percentage of funds from the Disbursement Special Account in partial reimbursement for Work performed up to the date of completion of that milestone. In most situations the appropriate milestones will be (1) completion of all activities in the EPA approved Remedial Design Work Plan, (2) completion of one or two components of the EPA approved Remedial Action Work Plan, and (3) Certification of Completion of the Remedial Action. Sample language follows.]~~

Milestone Disbursement of Funds _____ Disbursement of Funds

1. EPA approval of the Remedial _____ \$ _____ [or _____ % of funds] from the
_____ Design Work Plan _____ [Site Name] Disbursement Special Account
2. EPA approval of the [insert task] _____ \$ _____ [or _____ % of remaining funds] from _____
_____ the [Site Name] Disbursement Special Account
3. EPA Certification of Completion of _____ Remainder of funds in the [Site Name]
_____ the Remedial Action _____ Disbursement Special Account

EPA shall disburse the funds from the [Site Name] Disbursement Special Account to Settling Defendants in the following manner: ~~[Insert name and address for payment or instructions for electronic funds transfer.]~~

60. ~~Requests for Disbursement of Special Account Funds.~~

- a) ~~Within ___ days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 59, has been satisfactorily completed, Settling Defendants shall submit to EPA a Cost Summary and Certification, as defined in Subparagraph 60.b, covering the Work performed pursuant to this Consent Decree up to the date of completion of that milestone. Settling Defendants shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously reimbursed pursuant to Paragraph 59.~~
- b) ~~Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Settling Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 61. Each Cost Summary and Certification shall contain the following statement signed by the [insert, "Chief Financial Officer of a Settling Defendant," "Independent Certified Public Accountant," or title of other specified independent person acceptable to EPA]:~~

~~To the best of my knowledge, after thorough investigation and review of Settling Defendants' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree [insert, as appropriate, "up to the date of completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2," "between the date of completion of milestone 2 and the date of completion of the milestone 3,"] I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.~~

~~The [insert, "Chief Financial Officer of a Settling Defendant," "Independent Certified Public Accountant," or title of other specified independent person acceptable to EPA] shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.~~

- c) ~~If EPA finds that a Cost Summary and Certification includes a mathematical accounting error, costs excluded under Paragraph 61, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will~~

notify Settling Defendants and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Defendants fail to cure the deficiency within ____ days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Defendants in accordance with the procedures in Paragraph 59 of this Section. Settling Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XIX (Dispute Resolution). In no event shall Settling Defendants be disbursed funds from the [Site Name] Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

61. ~~Costs Excluded from Disbursement.~~ The following costs are excluded from, and shall not be sought by Settling Defendants for, disbursement from the [Site Name] Disbursement Special Account: (a) response costs paid pursuant to Section XVI; (b) any other payments made by Settling Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any interest or stipulated penalties paid pursuant to Sections XX; (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to ~~[insert reference to any obligations under the Decree for which legal services are essential, such as obtaining access or institutional controls]~~ as required by Section IX; (d) costs of any response activities Settling Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (e) costs related to Settling Defendants' litigation, settlement, development of potential contribution claims or identification of defendants; (f) internal costs of Settling Defendants, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Defendants directly performing the Work; (g) any costs incurred by Settling Defendants prior to the Effective Date ~~[if Remedial Design or other response activity performed under this Decree is commenced prior to the effective date of the Decree insert, "except for approved Work completed pursuant to this Consent Decree"]~~; or (h) any costs incurred by Settling Defendants pursuant to Section XIX (Dispute Resolution).
62. ~~Termination of Disbursements from the Special Account.~~ EPA's obligation to disburse funds from the [Site Name] Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within ____ days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 60 within ____ days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Settling Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 60. EPA's obligation to disburse funds from the [Site Name] Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 95, when such assumption of performance of the Work is not challenged by Settling Defendants or, if

~~challenged, is upheld under Section XIX (Dispute Resolution). Settling Defendants may dispute EPA's termination of special account disbursements under Section XIX (Dispute Resolution).~~

63. ~~Recapture of Special Account Disbursements.~~ Upon termination of disbursements from the [Site Name] Disbursement Special Account under Paragraph 62, if EPA has previously disbursed funds from the [Site Name] Disbursement Special Account for activities specifically related to the reason for termination (e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit a bill to Settling Defendants for those amounts already disbursed from the [Site Name] Disbursement Special Account specifically related to the reason for termination, plus interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Defendants. Within ____ days of receipt of EPA's bill, Settling Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, EPA Site/Spill Identification Number ____, and DOJ Case Number _____. Settling Defendants shall send the check(s) to: ~~[Insert appropriate regional Superfund Lockbox number and address]~~

At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions). Upon receipt of payment, EPA may deposit all or any portion thereof in the [Site Name] Special Account, the [Site Name] Disbursement Special Account, or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Settling Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XIX (Dispute Resolution).

64. ~~Balance of Special Account Funds.~~ After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, and after EPA completes all disbursement to Settling Defendants in accordance with this Section, if any funds remain in the [Site Name] Disbursement Special Account, EPA may transfer such funds to the [Site Name] Special Account or to the Hazardous Substance Superfund. Any transfer of funds to the [Site Name] Special Account or the Hazardous Substance Superfund shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

XVII. INDEMNIFICATION AND INSURANCE

65.52. Settling Defendants' Defendant's Indemnification of the United States ~~and the State~~.

- a) The United States ~~and the State~~ ~~do[es]~~does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling

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Defendants shall indemnify, save and hold harmless the United States~~[-the State,]~~ and its ~~{their}~~ officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants~~-their,~~ its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on ~~their~~its behalf or under ~~their~~its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants ~~agree~~Defendant agrees to pay the United States ~~{and the State}~~ all costs it ~~{they}~~incurs including, but not limited to, reasonable attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States ~~{or the State}~~ based on negligent or other wrongful acts or omissions of Settling Defendants~~-their,~~ its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on ~~their~~its behalf ~~or and~~ under ~~their~~its control, in carrying out activities pursuant to this Consent Decree. ~~{Neither} the~~The United States ~~{nor the State}~~ shall ~~{not}~~ be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States ~~{or the State}~~.

- b) The United States ~~{and the State}~~ shall give Settling Defendants notice of any claim for which the United States ~~{or the State}~~ plans to seek indemnification pursuant to this Paragraph 65- and shall consult with Settling Defendants prior to settling such claim.

66-53. Settling Defendants ~~waive~~Defendant waives all claims against the United States~~[-and the State]~~ for damages or reimbursement or for set-off of any payments made or to be made to the United States ~~{or the State}~~, arising from or on account of any contract, agreement, or arrangement between ~~any one or more of~~ Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States ~~{and the State}~~ with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between ~~any one or more of~~ Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

67-54. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain {until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 50.0(b) of Section ~~XIV~~ (Certification of Completion) XIV. CERTIFICATION OF COMPLETION, comprehensive general liability insurance with limits of one (1) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States ~~{and the State}~~ as {an} additional insured~~[s]~~. In addition, for the duration of this Consent Decree, Settling

Defendants shall satisfy, or shall ensure that ~~their~~^{its} contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA ~~and the State~~ certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants ~~demonstrate~~^{Defendant demonstrates} by evidence satisfactory to EPA ~~and the State~~ that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

~~68.55.~~ "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' ~~Defendants'~~ contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' ~~Defendants'~~ best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

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~~69.56.~~ If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, ~~the Director, the Assistant Regional Administrator, Office of the Hazardous Waste Management Division, Ecosystems Protection and Remediation, EPA Region - [VIII], within [insert period of time] three days, or as soon thereafter as practical,~~ of when Settling Defendants first knew that the event might cause a delay. Within ~~[-] twenty~~ days thereafter, Settling Defendants shall provide in writing to EPA ~~and the State~~ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' ~~Defendants'~~ rationale for attributing such delay to a force majeure event if they ~~intend~~^{it intends} to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their ~~its~~ claim that the delay was attributable to a force majeure. Failure to comply with

the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' Defendant's contractors knew or should have known.

~~70.57.~~ If EPA ~~[after a reasonable opportunity for review and comment by the State,]~~ agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA ~~[after a reasonable opportunity for review and comment by the State,]~~ for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA ~~[after a reasonable opportunity for review and comment by the State,]~~ does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA ~~[after a reasonable opportunity for review and comment by the State,]~~ agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

~~71.58.~~ If the Settling Defendants ~~elect~~ Defendant elects to invoke the dispute resolution procedures set forth in Section ~~XIX (Dispute Resolution)~~, they XIX. DISPUTE RESOLUTION, it shall do so no later than ~~45~~ 30 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 680 and 6956, above. If Settling Defendants ~~carry~~ Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

~~[NOTE: The dispute resolution procedures set forth in this Section may be supplemented to provide for use of mediation in appropriate cases. Mediation provisions should contain time limits to ensure that mediation does not cause delays in dispute resolution that could delay the remedial action.]~~

~~72.59.~~ Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

73.60 Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

74.61. Statements of Position.

- a) In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, ~~Settling Defendants invoke~~ Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States ~~and the State~~ a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the ~~Settling Defendants'~~ Defendant's position as to whether formal dispute resolution should proceed under Paragraph 7562 or Paragraph 7663.
- b) Within 15 days after receipt of ~~Settling Defendants'~~ Defendant's Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 7562 or ~~76. Paragraph 63~~. Within 10 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.
- c) If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 7562 or ~~76 Paragraph 63~~, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately ~~appeal~~ appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in ~~Paragraphs 75 and 76~~ Paragraph 62 or Paragraph 63.

75.62. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

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- a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.
- b) The Director of the Waste Management Division, EPA Region ~~—8~~, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph ~~75-62(a)~~. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph ~~75-62(c)~~ and (d).
- c) Any administrative decision made by EPA pursuant to Paragraph ~~75-62(b-)~~ shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within ~~+020~~ days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' ~~Defendant's~~ motion.
- d) In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph ~~75-62(a)~~.

~~76-63.~~ Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

- a) Following receipt of Settling Defendants' ~~Defendant's~~ Statement of Position submitted pursuant to Paragraph ~~7461~~, the Director of the Waste Management Division, EPA Region ~~—VIII~~, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within ~~+020~~ days of receipt of the decision, the Settling Defendants ~~file~~ ~~Defendant files~~ with the Court and ~~serves~~ ~~serves~~ on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' ~~Defendant's~~ motion.
- b) Notwithstanding Paragraph ~~MM~~ of Section ~~I-(Background)~~ I. BACKGROUND of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

~~77.64.~~ The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph ~~86.72.~~ Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants ~~do~~ Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section ~~XX (Stipulated Penalties).~~ XX. STIPULATED PENALTIES.

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XX. STIPULATED PENALTIES

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~~78.65.~~ Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 7966 and 801.a) to the United States ~~[and the State—specify percentage split]~~ for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section ~~XVIII (Force Majeure).~~ XVIII. FORCE MAJEURE. "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the ~~SOW~~ Remedial Design/Remedial Action Work Plan, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

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79.66. Stipulated Penalty Amounts - Work.

- a) [The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 79.66(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
_____ \$ _____ \$ 250	1st through 14th day
_____ \$ _____ \$ 500	15th through 30th day
_____ \$ _____ \$ 1000	31st day and beyond

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~~(1) [Compliance Milestones:~~

~~() [List violations or compliance milestones including due dates for payments]~~

80.67. Stipulated Penalty Amounts - Reports.

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- a) The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports ~~[or other written documents]~~ pursuant to Paragraphs _____ Article X. REPORTING REQUIREMENTS:

Penalty Per Violation Per Day

Period of Noncompliance

\$ _____ \$ 150

1st through 14th day

\$ _____ \$ 250

15th through 30th day

\$ _____ \$ 500

31st day and beyond

~~81. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 95 of Section XXI (Covenants Not to Sue by Plaintiff[s]), Settling Defendants shall be liable for a stipulated penalty in the amount of _____.]~~

~~82.68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions); XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region 8, under Paragraph 75.62(b or 76.a of Section XIX (Dispute Resolution);) or 63(a) of Section XIX. DISPUTE RESOLUTION, during the period, if any, beginning on the 21st day after the date that Settling Defendants' Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution); XIX. DISPUTE RESOLUTION, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.~~

~~83.69. Following EPA's determination that Settling Defendants have Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA {and the State} may send the Settling Defendants a written demand for the payment of the penalties. However, after which penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation this Article.~~

~~84.70. All penalties accruing under this Section shall be due and payable to the United States {and the State} within 30 days of the Settling Defendants' Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke Defendant invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution); XIX. DISPUTE RESOLUTION. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to [Insert the Regional Lockbox number and address], shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # ____ [Insert 4-digit no; first 2 numbers represent the~~

Region (01-10), second 2 numbers are the Region's Site/Spill Identifier number], the DOJ Case Number _____, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section ~~XXVI~~ (Notices and Submissions): **XXVI. NOTICES AND SUBMISSIONS**, and to **[Insert the names and mailing addresses of any other receiving officials at EPA.]**. [Where a State is entitled to a portion of the stipulated penalties, insert procedures for payment to State.]

~~85.71.~~ The payment of penalties shall not alter in any way Settling Defendants' ~~Defendant's~~ obligation to complete the performance of the Work required under this Consent Decree.

~~86.72.~~ Penalties shall continue to accrue as provided in Paragraph 821 during any dispute resolution period, but need not be paid until the following:

- a) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA ~~and the State~~ within ~~45~~ **30** days of the agreement or the receipt of EPA's decision or order;
- b) If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA ~~and the State~~ within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;
- c) If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States ~~for the State~~ into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA ~~and the State~~ or to Settling Defendants to the extent that they ~~prevail; it prevails.~~

~~87.73.~~ If Settling Defendants ~~fail~~ **Defendant fails** to pay stipulated penalties when due, the United States ~~for the State~~ may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 84-69.

~~88.74.~~ Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States ~~for the State~~ to seek any other remedies or sanctions available by virtue of Settling Defendants' ~~Defendant's~~ violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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~~89.75.~~ Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF[S]

~~[NOTE: Paragraph 90, Alternative 1, below, is only used for situations in which the United States has decided not to grant a full covenant not to sue, such as non-final Operable Unit consent decrees. In such cases, Paragraph 90, Alternative 2, and Paragraphs 90-93 should not be used in the consent decree. Be careful not to delete the "target" code at the beginning of Paragraph 90, Alternative 1.]~~

~~90.76. [Alternative 1]~~ In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 940 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to (i) Sections 106 and 107(a) or 113(f) of CERCLA ~~and Section 7003, 42 U.S.C. §§ 9606, 9607(a), or 9613(f); (ii) Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928, or 6973; or (iii) Sections 309(b), 311, or 504 of RCRA]~~ for performance of the Work ~~and for recovery of Past Response Costs and Future Response Costs]~~ the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321, or 1364, relating to the Site. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 54.48(a of Section XVI (Payments for Response Costs); of Section XVI. **PAYMENTS FOR RESPONSE COSTS.** These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

~~[NOTE: Paragraph 90, Alternative 2, and Paragraphs 91-93, below, should only be used in Consent Decrees in which the United States has decided to grant a full covenant not to sue.]~~

~~[Alternative 2]~~ In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 91, 92, and 94 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA ~~and Section 7003 of RCRA]~~ relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 54.a of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

77. The covenants, releases, and agreements set forth in this Article shall inure to the benefit of Settling Defendant (including its present and former officers, directors, and

shareholders) and its successors and assigns, and shall be binding upon and enforceable against the United States.

94.78. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

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- a) to perform further response actions relating to the Site, or
- b) to reimburse the United States for additional costs of response

if, priorsubsequent to Certification of Completion of the Remedial Action:

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i)a) conditions at the Site, previously unknown to EPA, are discovered, or

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ii)b) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

92.79. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

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- a) to perform further response actions relating to the Site, or
- b) to reimburse the United States for additional costs of response

if, subsequent to Certification of Completion of the Remedial Action:

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i)c) conditions at the Site, previously unknown to EPA, are discovered, or

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ii)d) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

93.80. For purposes of Paragraph 94.78, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed ~~and, or as otherwise~~ set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 92.78.a), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action ~~and, or otherwise~~ set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the

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requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

~~{NOTE: Include the next Paragraph in all Consent Decrees.}~~

94.81. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c) ~~liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material by Settling Defendant at or in connection with the Site, other than as provided authorized in Paragraph 1(c) or otherwise contemplated by the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants; {Note: The precise terms of subparagraphs c. may need to be changed if Settling Defendants have a continuing relationship with the Site.}~~
- d) ~~liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;~~
- e) ~~d) criminal liability;~~
- f) ~~liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and~~
- g) ~~liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14a) (Modification of the SOW Remedial Design/Remedial Action Work Plan or Related Work Plans);}~~

~~{NOTE: Subparagraphs h through k, below, should be used only where appropriate.}~~

- h) ~~{previously incurred costs of response above the amounts reimbursed pursuant to Paragraph 54.a;}~~
- i) ~~{liability for additional operable units at the Site or the final response action;}~~

j) ~~liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs;~~

k) ~~liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site plans.~~

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95.82. Work Takeover. In the event EPA determines that Settling Defendants have Defendant has ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 75 XIX. DISPUTE RESOLUTION, Paragraph 62, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Oversight Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs). XVI. PAYMENTS FOR RESPONSE COSTS.

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96.83. Notwithstanding any other provision of this Consent Decree, the United States ~~and the State~~ retain~~s~~ retains all authority and reserve[s] all rights to take any and all response actions authorized by law.

~~[NOTE: If the State is a Co-plaintiff, insert the State's]~~ XXII. COVENANTS BY SETTLING DEFENDANT

Covenant Not to Sue. Subject to the reservations in Paragraph 85, Settling Defendants and Reservation of Rights.

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XXII. COVENANTS BY SETTLING DEFENDANTS

97.84. Covenant Not to Sue. Subject to the reservations in Paragraph 98, Settling Defendants Defendant hereby ~~covenant~~ covenants not to sue and agree not to assert any claims or causes of action against the United States ~~or the State~~ with respect to ~~[FOR FINAL CONSENT DECREES: the Site] [FOR OU DECREES: the Work, past response actions; and [IF ADDRESSED] Past and Future Response Costs as defined herein]~~ or this Consent Decree, including, but not limited to:

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a) any direct or indirect claim for reimbursement ~~for costs of performing the Work~~ from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

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b) any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 arising prior to the Effective Date and related to the Site, or

- e) —any claims arising out of response actions at or in connection with the Site prior to the Effective Date, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

~~[NOTE: If the Consent Decree includes provisions under which the Settling Defendants will receive disbursements from an EPA special account, the following language should be added:]~~

- ~~d(c) [any direct or indirect claim for disbursement from the [Site Name] Special Account or [Site Name] Disbursement Special Account (established pursuant to this Consent Decree), except as provided in Section _____.] Except as provided in Paragraph 100 (Waiver of Claims Against De Minimis Parties), Paragraph 101 (Waiver of Claims Against De Minimis Parties), and Paragraph 106 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States [or the State] brings a cause of action or issues an order pursuant to the reservations set forth in [Paragraphs 91, 92, 94 (b) – (d) or 94 (g) – (k)], but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States [or the State] is seeking pursuant to the applicable reservation.~~

~~98.85.~~ The Settling Defendants ~~reserve~~ Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the 44 United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' ~~Defendant's~~ plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

~~99.86.~~ Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

~~100.87.~~ Settling Defendants ~~agree~~ Defendant agrees not to assert any claims and to waive all claims or causes of action that ~~they~~ it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

~~{NOTE: Use subparagraphs a and b if there is MSW or MSS at the Site.}~~

- a) ~~any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at the Site; and~~
- b) ~~any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.~~

~~{NOTE: Use subparagraph c if there is no MSW or MSS at the Site.}~~

- c) a) the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

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~~{NOTE: Use subparagraph d in all cases.}~~

- d) This waiver shall not apply to any claim or cause of action Settling Defendant may have against the Atlantic Richfield Corporation, ASARCO, Park City Ventures, Noranda, or any entities related thereto, or against any person meeting the above criteria if EPA has otherwise determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. ~~{This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.}~~

~~{NOTE: Use next paragraph if a de minimis settlement has been concluded at the Site.}~~

- 101.b) ~~Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final CERCLA § 122(g) de minimis settlement with EPA with respect to the Site as of the Effective Date. {This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.}~~

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XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

102.88. Except as provided in Paragraph 10087 (Waiver of Claims Against De Micromis Parties) ~~{and Paragraph 101 (Waiver of Claims Against De Minimis Parties)}~~, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may

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have under applicable law. Except as provided in Paragraph ~~100~~87 (Waiver of Claims Against De Micromis Parties) ~~and Paragraph 101 (Waiver of Claims Against De Minimis Parties)~~, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

~~103.~~89. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants ~~are Defendant~~ is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For purposes of this Consent Decree, "matters addressed in this Consent Decree" are defined as all response actions taken or to be taken, and all response costs incurred or to be incurred by the United States or any other person, with respect to the Site.

NOTE: ~~An explicit definition of "matters addressed," drafted in keeping with joint EPA/Department of Justice guidance entitled "Defining 'Matters Addressed' in CERCLA Settlements," May 14, 1997, should generally be included here.~~

~~104.~~—The Settling Defendants ~~agree~~ Defendant agrees that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree ~~they~~ it will notify the United States ~~and the State~~ in writing no later than 60 days prior to the initiation of such suit or claim.

~~105.~~90. The Settling Defendants also ~~agree~~ agrees that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree ~~they~~ it will notify in writing the United States ~~and the State~~ within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States ~~and the State~~ within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial. Notwithstanding the foregoing, no failure to provide notice to the United States shall compromise or abrogate the protections provided by Paragraph 89 above.

~~106.~~91. In any subsequent administrative or judicial proceeding initiated by the United States ~~for the State~~ for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claimsplitting, or other defenses based upon any contention that the claims raised by the United States ~~for the State~~ in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section ~~XXI~~ (Covenants Not to Sue by Plaintiff(s)). XXI. COVENANTS NOT TO SUE BY PLAINTIFF.

XXIV. ACCESS TO INFORMATION

107.92 Settling Defendants shall provide to EPA ~~and the State~~, upon request, copies of all documents and information within ~~their~~its possession or control or that of ~~their~~its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA ~~and the State~~, for purposes of investigation, information gathering, or testimony, ~~their~~its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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108.93 Business Confidential and Privileged Documents.

- a) Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff[s] under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA ~~and the State~~, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.
- b) ~~The~~ Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If ~~the~~ Settling Defendants ~~assert~~ assert Defendant asserts such a privilege in lieu of providing documents, ~~they~~it shall provide the Plaintiff ~~with~~ the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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109.94 No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

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XXV. RETENTION OF RECORDS

~~110.95.~~ Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.45(b) of Section XIV (~~Certification of Completion of the Work~~), ~~each~~ XIV. CERTIFICATION OF COMPLETION, Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants ~~who are potentially liable as owners or operators of the Site~~ must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. ~~Each~~ Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

~~111.96.~~ At the conclusion of this document retention period, Settling Defendants shall notify the United States ~~[and the State]~~ at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States ~~[or the State]~~, Settling Defendants shall deliver any such records or documents to EPA ~~[or the State]~~. ~~The~~ Settling Defendants may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If ~~the Settling Defendants assert~~ Defendant asserts such a privilege, ~~they~~ it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

~~112.97.~~ ~~Each~~ Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State ~~or the filing of suit against it regarding the Site~~ and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

113.98 Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, [the State,] and the Settling Defendants, respectively.

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As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # _____

And

Director, Waste Management Division

Assistant Regional Administrator 8 EPR
United States Environmental Protection Agency
Region —8

999 18th Street, Suite 300

Denver, CO 80202-2466

As to EPA:

[Name]Peggy Churchill
EPA Project Coordinator
United States Environmental Protection Agency
Region —8

999 18th Street, Suite 300

Denver, CO 80202-2466

As to the Regional Financial Management Officer:

"Appendix A" is the ROD:

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of the Settling Defendants.

"Appendix E" is the complete list of the Owner Settling Defendants.

XXX. COMMUNITY RELATIONS

117.102. Settling Defendants shall propose to EPA ~~and the State~~ their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA ~~and the State~~ in providing information regarding the Work to the public. As requested by EPA ~~or the State~~, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA ~~or the State~~ to explain activities at or relating to the Site.

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XXXI. MODIFICATION

118.103. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

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119.104. Except as provided in Paragraph 44a) (Modification of the SOW Remedial Design/Remedial Action Work Plan or Related Work Plans related plans), no material modifications shall be made to the SOW Remedial Design/Remedial Action Work Plan without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW Remedial Design/Remedial Action Work Plan that do not materially alter that document, or material modifications to the SOW Remedial Design/Remedial Action Work Plan that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii), may be made by written agreement between EPA ~~after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.~~

120.105. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

121.106. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of

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CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent Defendant consents to the entry of this Consent Decree without further notice.

~~122~~ 107. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

~~123~~ 108. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

~~124~~ 109. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants Defendant in writing that it no longer supports entry of the Consent Decree.

~~125~~ 110. ~~Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree~~ agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. {The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree}.

XXXIV. FINAL JUDGMENT

~~126~~ 111. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

~~127~~ 112. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.

_____, relating to the _____ Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date

[Name]
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

[Name]
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Date

[Name]
Assistant United States Attorney
_____ District of _____
U.S. Department of Justice
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.

_____, relating to the _____ Superfund Site.

Date _____

[Name] _____
Regional Administrator, Region ____
U.S. Environmental Protection Agency
[Address] _____

Date

[Name] _____
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region ____
[Address] _____

[Note: Add signature blocks for OECA, if its concurrence is required]

FOR THE STATE OF _____

Date [Name] _____
[Title] _____
[Address] _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
_____, relating to the _____ Superfund Site.

| PARK CITY MINES CO., INC.

FOR _____ COMPANY UNITED

Date

Signature: _____
Name (print): _____
Title: _____
Address: _____

P.O. Box 1450

Park City, Utah 84060

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____

Title: _____

Address: _____

Mabey Murray LC

1000 Kearns Bldg.

136 South Main Street

Salt Lake City, Utah 84104-1645

Ph. Number: _____ (801) 320-

6700